

103^D CONGRESS
2^D SESSION

S. 2123

To prohibit insured depository institutions and credit unions from engaging in certain activities involving derivative financial instruments.

IN THE SENATE OF THE UNITED STATES

MAY 17 (legislative day, MAY 16), 1994

Mr. DORGAN (for himself and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To prohibit insured depository institutions and credit unions from engaging in certain activities involving derivative financial instruments.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Derivatives Limita-
5 tions Act of 1994”.

6 **SEC. 2. INSURED DEPOSITORY INSTITUTIONS.**

7 The Federal Deposit Insurance Act (12 U.S.C. 1811
8 et seq.) is amended by adding at the end the following
9 new section:

1 **“SEC. 44. DERIVATIVE INSTRUMENTS.**

2 “(a) DERIVATIVES ACTIVITIES.—

3 “(1) GENERAL PROHIBITION.—Except as pro-
4 vided in paragraph (2), neither an insured deposi-
5 tory institution, nor any affiliate thereof, may pur-
6 chase, sell, or engage in any transaction involving a
7 derivative financial instrument for the account of
8 that institution or affiliate.

9 “(2) EXCEPTIONS.—

10 “(A) HEDGING TRANSACTIONS.—An in-
11 sured depository institution may purchase, sell,
12 or engage in hedging transactions to the extent
13 that such activities are approved by rule, regu-
14 lation, or order of the appropriate Federal
15 banking agency issued in accordance with para-
16 graph (3).

17 “(B) SEPARATELY CAPITALIZED AFFILI-
18 ATE.—A separately capitalized affiliate of an
19 insured depository institution that is not itself
20 an insured depository institution may purchase,
21 sell, or engage in a transaction involving a de-
22 rivative financial instrument if such affiliate
23 complies with all rules, regulations, or orders of
24 the appropriate Federal banking agency issued
25 in accordance with paragraph (3).

1 “(C) DE MINIMIS INTERESTS.—An insured
2 depository institution may purchase, sell, or en-
3 gage in transactions involving de minimis inter-
4 ests in derivative financial instruments for the
5 account of that institution to the extent that
6 such activity is defined and approved by rule,
7 regulation, or order of the appropriate Federal
8 banking agency issued in accordance with para-
9 graph (3).

10 “(D) EXISTING INTERESTS.—During the
11 3-month period beginning on the date of enact-
12 ment of this section, nothing in this section
13 shall be construed—

14 “(i) as affecting an interest of an in-
15 sured depository institution in any deriva-
16 tive financial instrument which existed on
17 the date of enactment of this section; or

18 “(ii) as restricting the ability of the
19 institution to acquire reasonably related in-
20 terests in other derivative financial instru-
21 ments for the purpose of resolving or ter-
22 minating an interest of the institution in
23 any derivative financial instrument which
24 existed on the date of enactment of this
25 section.

1 “(3) ISSUANCE OF RULES, REGULATIONS, AND
2 ORDERS.—The appropriate Federal banking agency
3 shall issue appropriate rules, regulations, and orders
4 governing the exceptions provided for in paragraph
5 (2), including—

6 “(A) appropriate public notice require-
7 ments;

8 “(B) a requirement that any affiliate de-
9 scribed in subparagraph (B) of paragraph (2)
10 shall clearly and conspicuously notify the public
11 that none of the assets of the affiliate, nor the
12 risk of loss associated with the transaction in-
13 volving a derivative financial instrument, are in-
14 sured under Federal law or otherwise guaran-
15 teed by the Federal Government or the parent
16 company of the affiliate; and

17 “(C) any other requirements that the ap-
18 propriate Federal banking agency considers ap-
19 propriate.

20 “(b) DEFINITIONS.—For purposes of this section—

21 “(1) the term ‘derivative financial instrument’
22 means—

23 “(A) an instrument the value of which is
24 derived from the value of stocks, bonds, other
25 loan instruments, other assets, interest or cur-

1 rency exchange rates, or indexes, including
2 qualified financial contracts (as defined in sec-
3 tion 11(e)(8)); and

4 “(B) any other instrument that an appro-
5 priate Federal banking agency determines, by
6 regulation or order, to be a derivative financial
7 instrument for purposes of this section; and

8 “(2) the term ‘hedging transaction’ means any
9 transaction involving a derivative financial instru-
10 ment if—

11 “(A) such transaction is entered into in
12 the normal course of the institution’s business
13 primarily—

14 “(i) to reduce risk of price change or
15 currency fluctuations with respect to prop-
16 erty which is held or to be held by the in-
17 stitution; or

18 “(ii) to reduce risk of interest rate or
19 price changes or currency fluctuations with
20 respect to loans or other investments made
21 or to be made, or obligations incurred or to
22 be incurred, by the institution; and

23 “(B) before the close of the day on which
24 such transaction was entered into (or such ear-
25 lier time as the appropriate Federal banking

1 agency may prescribe by regulation), the insti-
 2 tution clearly identifies such transaction as a
 3 hedging transaction.”.

4 **SEC. 3. INSURED CREDIT UNIONS.**

5 Title II of the Federal Credit Union Act (12 U.S.C.
 6 1781 et seq.) is amended by adding at the end the follow-
 7 ing new section:

8 **“SEC. 215. DERIVATIVE INSTRUMENTS.**

9 “(a) DERIVATIVE ACTIVITIES.—Except as provided
 10 in subsection (b), neither an insured credit union, nor any
 11 affiliate thereof, may purchase, sell, or engage in any
 12 transaction involving a derivative financial instrument.

13 “(b) APPLICABILITY OF SECTION 44 OF THE FED-
 14 ERAL DEPOSIT INSURANCE ACT.—Section 44 of the Fed-
 15 eral Deposit Insurance Act shall apply with respect to in-
 16 sured credit unions and affiliates thereof and to the Board
 17 in the same manner that such section applies to insured
 18 depository institutions and affiliates thereof (as those
 19 terms are defined in section 3 of that Act) and shall be
 20 enforceable by the Board with respect to insured credit
 21 unions and affiliates under this Act.

22 “(c) DERIVATIVE FINANCIAL INSTRUMENT.—For
 23 purposes of this section, the term ‘derivative financial in-
 24 strument’ means—

1 “(1) an instrument the value of which is de-
 2 rived from the value of stocks, bonds, other loan in-
 3 struments, other assets, interest or currency ex-
 4 change rates, or indexes, including qualified finan-
 5 cial contracts (as defined in section 207(c)(8)(D));
 6 and

7 “(2) any other instrument that the Board de-
 8 termines, by regulation or order, to be a derivative
 9 financial instrument for purposes of this section.”.

10 **SEC. 4. BANK HOLDING COMPANIES.**

11 Section 3 of the Bank Holding Company Act of 1956
 12 (12 U.S.C. 1842) is amended by adding at the end the
 13 following new subsection:

14 “(h) DERIVATIVES ACTIVITIES.—

15 “(1) IN GENERAL.—A subsidiary of a bank
 16 holding company may purchase, sell, or engage in
 17 any transaction involving a derivative financial in-
 18 strument for the account of that subsidiary if it—

19 “(A) is not an insured depository institu-
 20 tion or a subsidiary of an insured depository in-
 21 stitution; and

22 “(B) is separately capitalized from any af-
 23 filiated insured depository institution.

24 “(2) APPLICABILITY OF SECTION 44 OF THE
 25 FEDERAL DEPOSIT INSURANCE ACT.—Section 44 of

1 the Federal Deposit Insurance Act shall apply with
2 respect to bank holding companies and the Board in
3 the same manner that those such subsections apply
4 to an insured depository institution (as defined in
5 section 3 of that Act) and shall be enforceable by
6 the Board with respect to bank holding companies
7 under this Act.

8 “(3) DERIVATIVE FINANCIAL INSTRUMENT.—
9 For purposes of this subsection, the term ‘derivative
10 financial instrument’ means—

11 “(A) an instrument the value of which is
12 derived from the value of stocks, bonds, other
13 loan instruments, other assets, interest or cur-
14 rency exchange rates, or indexes, including
15 qualified financial contracts (as defined in sec-
16 tion 207(c)(8)(D)); and

17 “(B) any other instrument that the Board
18 determines, by regulation or order, to be a de-
19 rivative financial instrument for purposes of
20 this subsection.”.

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